

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

United States of America,

Plaintiff,

v.

Cr. No. 05-50070

Kery Linn Mahan,

Honorable Sean F. Cox

Defendant.

ORDER
DETERMINING DEFENDANT COMPETENT TO STAND TRIAL

In a prior order issued by Magistrate Judge Michael Hluchaniuk on April 17, 2008, Defendant Kery Linn Mahan (“Defendant”) was found competent to stand trial in this action. (*See* Docket Entry No. 68).

As the case proceeded, however, issues were again raised as to the competency of Defendant to stand trial. Accordingly, on June 27, 2008, this Court issued an “Order for Psychiatric or Psychological Examination of Defendant” to determine if he is competent to stand trial in this action. Thereafter, Ron Nieberding, Ph.D. (“Dr. Nieberding”) evaluated Defendant and submitted a written report to the Court, wherein Dr. Nieberding opined that Defendant is competent to stand trial.

On October 21, 2008, the Court conducted a hearing. At that hearing, the Government and Defense Counsel both indicated their belief that Defendant is competent to stand trial.

Nevertheless, this Court must determine whether Defendant is competent to stand trial. In order for Defendant to be deemed incompetent to stand trial in this action, this Court must determine that, by a preponderance of the evidence, Defendant is presently suffering from a

mental disease or defecting rendering her mentally incompetent to the extent that he is unable to understand the nature and consequences of the proceedings against her or to assist properly in his defense. 18 U.S.C. § 4241. “The determination of whether a defendant is mentally competent to stand trial is a question left to the sound discretion of the district court, with the advice of psychiatrists [or other mental health professionals].” FED. PROC. § 22:549, *Hearing and Determination as to Competency; United States v. Davis*, 365 F.2d 251, 256 (6th Cir. 1966).

As stated on the record on October 21, 2008, after consideration of the expert report submitted by Dr. Nieberding, this Court concludes that the evidence establishes that Defendant is competent to stand trial in this matter.

Accordingly, the Court ORDERS that Defendant is competent to stand trial in this action.

IT IS SO ORDERED.

S/Sean F. Cox
Sean F. Cox
United States District Judge

Dated: October 21, 2008

I hereby certify that a copy of the foregoing document was served upon counsel of record on October 21, 2008, by electronic and/or ordinary mail.

S/Jennifer Hernandez
Case Manager